IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

WP.No.1429/2003

C.Ram Mohan
1.C.Madan Mohan
2.C.Raj Mohan
3.C.Prem Mohan Petitioners

vs.

1.The Government of Tamil Nadu by Secretary
Revenue Department, Fort St.George, Chennai-9

2.The Principal Commissioner & Commissioner
of Land Reforms, Chepauk, Chennai-5

3.The Assistant Commissioner/Competent Authority
Urban Land Ceiling, Poonamallee Respondents

Prayer:- This Writ Petitions is filed under Art.226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the Respondents especially the proceedings under Section 9(5) in Ref.SR.931/96 dated 10.4.1997, Statement under Sec.10(1) in Ref.Rc.2029/98/D dated 24.7.1998 and Notice under Section 11(5) in Ref.Rc.2029/99/D dated 30.4.1999 of the 3rd Respondent in respect of the lands in S.Nos.101/1, 101/2, 102, 103/1A in Voyalanallur Village, Poonamallee Taluk and quash the same and to direct the Respondents to treat the land as falling outside the provisions of the Act 24/1978 by virtue of Section 4 of the Act 20 of 1999.

For Petitioners : Mr.Ramesh

For Respondents: Mr.A.Edwin Prabakar, GA

ORDER

1.The case of the Petitioners is as follows:-

The lands comprised in S.Nos.101/1, 101/2, 102, 103/1A in Voyalanallur Village, Poonamallee Taluk to an extent of 16 acres were purchased by the Petitioners and one Sheshadri under two sale deeds both dated 29.7.1992. The said Seshadri executed a release deed in favour of the Petitioners, releasing his right, title and interest over the land covered by the said sale deeds. The Petitioners started using a portion of the said lands for manufacture of bricks under the brand name M/s.Mohan Brick Industries and one of the Petitioners is an Architect and the 3rd Petitioner is a building contractor. Even

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though a small portion of the said lands was used for manufacture of bricks, the remaining larger extent of lands were used only for agricultural purposes. The Respondents passed an order under Section 9 (5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act (herein after referred to as the Act) dated 10.4.1997 allowing an extent of 500 sq.metres towards family entitlement and an extent of 36,600 sq.metres comprised in S.Nos.101/1, 2, 102 and 103/1A was found excess; that the 3rd Respondent proceeded under Section 10(1) and no notice under Section 11(5) of the Act have been served, but it was alleged by the Respondents that it was served by way of affixture and later possession was taken over on 14.6.1999 from the Petitioners. The Petitioners are in possession all along, which is evidenced from the Adangal extracts issued by the Revenue Officials concerned for Fasli 1409 and 1410 and never part with possession at any time. In view of the facts that the Petitioner are in continuous possession and that the Respondents did not comply with the mandatory provisions of the said Act and Rules, the impugned order is liable to be quashed.

2. The case of the Respondents is that notice dated 14.2.1996 under Section 7(2) of the Act was served on the Petitioners on 18.2.1996 and the order under Section 9(5) of the Act rejecting the objection of the Petitioner was also served on the Petitioners by way of affixture and that the final statement under Section 10(1) was made on 24.7.1998, which was also served on the Petitioners and that the notice under Section 11(5) dated 30.4.1999 was also served on the Petitioners by way of affixture and that after the period of 30 days provided to surrender possession, the Respondents took possession of the said lands on 14.6.1999 from the Petitioners well prior to the date of introduction of the Repeal Act i.e. 16.6.1999.

3. The learned counsel for the Petitioners has submitted that the Respondents failed to comply with the mandatory provisions of the said Act, which contemplates that the notices shall be served on the land owners by Registered Post With Acknowledgement Due, which was not at all complied with and that the land in dispute is utilised by the Petitioners for the purpose of manufacture of bricks and hence, the same cannot be treated as a vacant land and not at all fit for construction of houses and that the possession of the lands all along with the Petitioners and that though the Respondents alleged that they took possession on 14.6.1999, the same is false and not supported by any valid evidence and on the contrary, the Petitioners have produced adangal extracts for Fasli 1409 and 1410 issued by the revenue officials to show that even prior and after the date of introduction of the Repeal Act, the possession was with the Petitioners and that the alleged service of notice by way of affixture is bad in law and that in view of the fact that the Petitioners are always in possession of the said lands even before and after the Repeal Act, which was protected by the interim orders granted by this court till date and the Petitioners are entitled to the benefits of the Repeal Act, 1999 and prayed for allowing of this Writ Petition.

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4. The learned Government Advocate for the Respondents has submitted that the notice under Section 7(2) was served on the 1st Petitioner on 18.2.1996 and the order under Section 9(5) dated 10.4.1997 was also served by way of affixture and that the notice under Section 10(1) of the Act dated 24.7.1998 was also served on the Petitioners and notice under Section 11(5) dated 30.4.1999 was also served by way of affixture and that the Petitioners failed to surrender possession within 30 days as contemplated under Section 11(5) of the Act and that the possession was taken over by the Respondents on 14.6.1999 and that in view of the fact that the possession was taken over on 14.6.1999, which is prior to the date of introduction of the Repeal Act, the petitioners are not entitled to seek the relief as sought for in this Writ Petition and prayed for dismissal of this Writ Petition.

5. This court carefully considered the arguments of the learned counsel on either side and also perused the material records placed.

6. Section 7 of the Act provides that the persons holding vacant land in excess of ceiling limit has to file statement. Section 9(1) of the Act provides for preparation of draft statement as regards vacant land held in excess of ceiling limit. As per Section 9(1), on the basis of the statement filed under sub section (1) or sub section (2) of section 7 or on the basis of information obtained under sub section (5) of that section and after such enquiry as the competent authority may deem fit to make, the competent authority shall prepare a draft statement in respect of the person who has filed the statement under sub section (1) or sub section (2) of section 7 or as the case may be, about whose lands informations has been obtained under sub section (5) of that section.

7. As per Section 9(5), the competent authority shall duly consider any objection received within the period specified in the notice referred the in sub section (4) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person on whom a copy of the draft statement has been served under that sub section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

8. As per Section 10(1), final statement shall be prepared after the disposal of the objections by the authorities. After the preparation of the draft statement and hearing objections, if any, a final statement is prepared determining the vacant land held by a person and declaring as surplus the lands held in excess of the ceiling limit. A copy of the final statement should be sent to all parties having an interest in the land. Section 3(B) defining 'holding' states that anybody in possession of the lands as tenant mortgagee, or under power of attorney or hire purchase agreement is a person 'holding' the lands. Hence, notices should be sent to all these parties in Form 4 by registered post to the last known address and if undelivered a copy should be affixed in the last known residence as per the provisions in Rule 8 of the Tamil Nadu Urban Land (Ceiling and Regulation) Rules 1978.

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9. Section 10 gives discretion to the competent authority that if any such excess vacant land is not fit or cannot be used for building purposes, to report to the Government accordingly, and the Government can declare that such land is not excess vacant land. It follows that the criterion for taking over excess land is its suitability for building purposes. If land that is unfit for building purposes is taken over by Government it is liable to be challenged on that ground.
10. Section 11 provides for acquisition of vacant land in excess of ceiling limit. As per Section 11, as soon as may be after the service of the final statement under Section 10 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit. As per Section 11(5), where any vacant land is vested in the State Government under sub section (3) of Section 11 the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the state Government or to any person duly authorised by the State Government in this behalf within thirty days of the service of the notice.
11. Taking into consideration of the above said mandatory provisions of the Act, when we look into the case on hand, no valid evidence is produced by the Respondents to show that the draft statement was served on the Petitioners, as regards vacant land held in excess of ceiling limit by them. As per Section 9(4), the draft statement shall be served in such a manner as may be prescribed on the person concerned together with a notice, stating that any objection to the draft statement shall be preferred within 30 days of the service thereof. The said notice shall be served as contemplated under Rule 8. Rule 8 contemplates that notice shall be served by Registered Post with Acknowledgement Due to the last known address and if not delivered a copy should be affixed in the said known residence, but in so far as both the mandatory provisions are concerned, the Respondents have not produced any valid evidence to show that the same were complied with. It is to be remembered that after the disposal of the objection filed under Section 9(5), shall make necessary alterations in the draft statement in accordance with the order based on the objections and shall determine the vacant land held by the persons concerned in excess of ceiling limit and cause a copy of the statement as so altered to be served in the manner referred to in sub section 4 of Section 9 on the persons concerned. It is alleged by the Respondents that final statement was also served on the Petitioner by affixture, which is contrary to Rule 8. Without sending it by Registered Post as contemplated under Section 10 read with Rule 8, it was allegedly affixed, hence, it is not a valid service. Moreover, this court also verified the affixture procedures followed by the Respondents, which is also not satisfactory.
12. It is alleged by the Respondents that 11(5) notice dated 30.4.1999 was served by way of affixture, which is also invalid. Indeed, the said affixture is not attested by the local witnesses or any other witnesses. The designation of the person, who made the affixture, is also not found mentioned.
13. It is stated by the Respondents that on 14.6.1999, possession was taken over by them from the Petitioners, for which they relied on an

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internal communication exchanged between the Regular Tahsildar and the Firka Tahsildar, wherein the signatures of the Petitioners were not found. Even assuming that the possession was taken by the Respondents, it is nothing but only a paper possession. On the contrary, the Petitioners produced adangal extracts for Fasli 1409 and 1410 to show that they are in possession of the lands in dispute even prior to and after the Repeal Act. Moreover, this court also protected the possession of the Petitioners by way of interim orders during the pendency of this Writ Petition.

14.In view of the facts that the Respondents have not complied with the mandatory provisions of serving notice, final statement and delivery of possession and failed to give opportunity to the petitioners to file their objections and no where in their order made any discussion about the suitability of the lands for construction of houses as the said lands admittedly used only for the purpose of manufacturing bricks as well as agricultural purpose and even the alleged take over of possession is not proved by any valid evidence and that the Petitioners are in continuous possession of the lands in dispute all along even prior to the Repeal Act and after the Repeal Act and the petitioners possession is protected by this Court during the pendency of this writ petition by granting interim order, this court is of the considered view that the prayer as sought for in this Writ Petition is to be granted.

15.In the result, this Writ Petition is allowed, as prayed for. No costs.

Srcm

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Secretary,Government of Tamil Nadu,
Revenue Department, Fort St.George, Chennai-9

2.The Principal Commissioner & Commissioner
of Land Reforms, Chepauk, Chennai-5

3.The Assistant Commissioner/Competent Authority
Urban Land Ceiling, Poonamallee
+ One cc to Mr. V. Ramesh, Advocate sR 19498
+ One cc to Govt Pleader sR 19827
GV (co)
sg 7/5/07 WP.No.1429/2003

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